

AMENDED IN ASSEMBLY JUNE 1, 2004

**SENATE BILL**

**No. 1482**

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**Introduced by Senator Sher**

February 19, 2004

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An act to amend Section 5093.68 of the Public Resources Code, relating to wild and scenic rivers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1482, as amended, Sher. Wild and scenic rivers: special treatment areas.

The California Wild and Scenic Rivers Act includes specified rivers and segments thereof within the California Wild and Scenic River system, which are subject to various protections under the act.

The act defines "special treatment areas" for purposes of the act, provides for the responsibilities of timber operators and registered professional foresters regarding timber operations within those areas, and makes it a misdemeanor to willfully violate the Z'Berg-Nejedly Forest Practice Act of 1973 regarding those operations, as well as imposes civil penalties. The act authorizes the Director of Forestry and Fire Protection to require a bond or other evidence of financial responsibility from any timber operator whose ability to pay those civil damages is reasonably determined to be uncertain.

This bill would delete those provisions regarding willful violations of the Z'Berg-Nejedly Forest Practice Act of 1973 and the authority to require a bond for civil damages. The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 5093.68 of the Public Resources Code is amended to read:

5093.68. (a) Within the boundaries of special treatment areas *adjacent to wild, scenic, or recreational river segments*, all of the following provisions shall apply, in addition to any other ~~provision~~ *applicable provision under this chapter or generally*, whether by statute or regulation:

(1) A timber operator, whether licensed or not, is responsible for the actions of his or her employees. The registered professional forester who prepares and signs a timber harvesting plan, a timber management plan, or a notice of timber operations is responsible for its contents, but is not responsible for the implementation or execution of the plan or notice unless employed for that purpose.

(2) A registered professional forester preparing a timber harvesting plan shall certify that he or she or a qualified representative has personally inspected the plan area on the ground.

(b) In order to temporarily suspend timber operations that are being conducted within special treatment areas adjacent to ~~wild and scenic~~ *wild, scenic, or recreational* rivers designated pursuant to Section 5093.54, while judicial remedies are pursued pursuant to this section, an inspecting forest officer of the Department of Forestry and Fire Protection may issue a written timber operations stop order if, upon reasonable cause, the officer determines that a timber operation is being conducted, or is about to be conducted, in violation of Chapter 8 (commencing with Section 4511) of Part 2 of Division 4, or of rules and regulations adopted pursuant to those provisions, and that the violation or threatened violation would result in imminent and substantial damage to soil, water, or timber resources or to fish and wildlife habitat. A stop order shall apply only to those acts or omissions that are the proximate cause of the violation or that are reasonably foreseen would be the proximate cause of a violation. The stop order shall be effective immediately and throughout the next day.

(c) A supervising forest officer may, after an onsite investigation, extend a stop order issued pursuant to subdivision (b) for up to five days, excluding Saturday and Sunday, ~~provided~~ *that if the forest officer finds that the original stop order was issued*

1 upon reasonable cause. A stop order shall not be issued or extended  
2 for the same act or omission more than one time.

3 (d) Each stop order shall identify the specific act or omission  
4 that constitutes a violation or that, if foreseen, would constitute a  
5 violation, the specific timber operation that is to be stopped, and  
6 any corrective or mitigative actions that may be required.

7 (e) The Department of Forestry and Fire Protection may  
8 terminate the stop order if the timber operator enters into a written  
9 agreement with the department assuring that the timber operator  
10 will resume operations in compliance with the provisions of  
11 Chapter 8 (commencing with Section 4511) of Part 2 of Division  
12 4, and with the rules and regulations adopted pursuant to those  
13 provisions, and will correct any violation. The department may  
14 require a reasonable cash deposit or bond payable to the  
15 department as a condition of compliance with the agreement.

16 (f) Notice of the issuance of a stop order or an extension of a  
17 stop order shall be deemed to have been made to all persons  
18 working on the timber operation when a copy of the written order  
19 is delivered to the person in charge of operations at the time that  
20 the order is issued or, if no persons are present at that time, by  
21 posting a copy of the order conspicuously on the yarder or log  
22 loading equipment at a currently active landing on the timber  
23 operations site. If no person is present at the site when the order is  
24 issued, the issuing forest officer shall deliver a copy of the order  
25 to the timber operator either in person or to the operator's address  
26 of record prior to the commencement of the next working day.

27 (g) As used in this section, "forest officer" means a registered  
28 professional forester employed by the Department of Forestry and  
29 Fire Protection in a civil service classification of forester II or  
30 higher grade.

31 (h) (1) Failure of the timber operator or an employee of the  
32 timber operator, after receiving notice pursuant to this section, to  
33 comply with a validly issued stop order is a violation of this section  
34 and a misdemeanor punishable by a fine of not less than five  
35 hundred dollars (\$500) or more than five thousand dollars  
36 (\$5,000), or by imprisonment for not more than one year in the  
37 county jail, or both. The person shall also be subject to civil  
38 damages to the state not to exceed ten thousand dollars (\$10,000)  
39 for each misdemeanor violation. However, in all cases, the timber  
40 operator, and not an employee of the operator or any other person,

1 shall be charged with that violation. Each day or portion thereof  
2 that the violation continues shall constitute a new and separate  
3 offense.

4 (2) In determining the penalty for any timber operator guilty of  
5 violating a validly issued stop order, the court shall take into  
6 consideration all relevant circumstances, including, but not  
7 limited to, the following:

8 (A) The extent of harm to soil, water, or timber resources or to  
9 fish and wildlife habitat.

10 (B) Corrective action, if any, taken by the defendant.

11 (i) Nothing in this section ~~shall prevent~~ *prevents* a timber  
12 operator from seeking an alternative writ as prescribed in Chapter  
13 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code  
14 of Civil Procedure, or as provided by any other provision of law.

15 (j) (1) If a timber operator believes that a forest officer lacked  
16 reasonable cause to issue or extend a stop order pursuant to this  
17 section, the timber operator may present a claim to the State Board  
18 of Control pursuant to Part 3 (commencing with Section 900) of  
19 Division 3.6 of Title 1 of the Government Code for compensation  
20 and damages resulting from the stopping of timber operations.

21 (2) If the State Board of Control finds that the forest officer  
22 lacked reasonable cause to issue or extend the stop order, the board  
23 shall award a sum of not less than one hundred dollars (\$100), nor  
24 more than one thousand dollars (\$1,000), per day for each day the  
25 order was in effect.

